

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN ROBERT DEMOS,

Plaintiff,

v.

STATE OF WASHINGTON DEPARTMENT
OF CORRECTIONS, *et al.*,

Defendants.

CASE NO. C18-1770-JCC

ORDER

This matter comes before the Court on Plaintiff John Robert Demos' objections (Dkt. No. 3) to the report and recommendation (Dkt. No. 2) issued by the Honorable Brian A. Tsuchida, United States Magistrate Judge. Having reviewed Judge Tsuchida's report and recommendation, Plaintiff's objections, and the relevant record, the Court **OVERRULES** Plaintiff's objections and **ADOPTS** the report and recommendation for the reasons set forth herein.

Plaintiff is currently incarcerated at the Monroe Correctional Complex. (Dkt. No. 3 at 6.) Plaintiff, acting *pro se*, filed a 42 U.S.C. § 1983 claim against various correctional officers, officials, and the Washington Department of Corrections. (*See* Dkt. No. 1-1.) Plaintiff alleges that correctional officers used "rough and unnecessary force" to return him to his cell. (*Id.* at 2.) He also alleges that he is in "imminent danger, as I do not feel safe here in the IMU protective custody unit, as staff serve me my food, and my medications, staff could easily tamper with my

1 food and medications before they get to me.” (*Id.*)

2 Judge Tsuchida declined service of Plaintiff’s complaint and recommends the complaint
3 be dismissed without prejudice for failure to state a claim. (Dkt. No. 2 at 2.) Judge Tsuchida
4 notes that because Plaintiff is a bar order litigant, he “must demonstrate ‘imminent danger of
5 serious physical injury,’ to proceed IFP because he has had numerous prior actions dismissed as
6 frivolous, malicious, or for failure to state a claim.” (*Id.*) (citing 28 U.S.C. § 1915(g)). Plaintiff
7 objects to Judge Tsuchida’s report and recommendation. (Dkt. No. 3.)

8 A district court reviews objections to a magistrate judge’s report and recommendation *de*
9 *novo*. Fed. R. Civ. P. 72(b)(3). The district court may accept, reject, or modify the recommended
10 disposition; receive further evidence; or return the matter to the magistrate judge with
11 instructions. *Id.* Pursuant to the Prisoner Litigation Reform Act:

12 In no event shall a prisoner bring a civil action or appeal a judgment in a civil action
13 or proceeding under this section if the prisoner has, on 3 or more prior occasions,
14 while incarcerated or detained in any facility, brought an action or appeal in a court
15 of the United States that was dismissed on the grounds that it is frivolous, malicious,
or fails to state a claim upon which relief may be granted, unless the prisoner is
under imminent danger of serious physical injury.

16 28 U.S.C. § 1915(g). Plaintiff is subject to a bar order in this Court because he has had more than
17 three actions dismissed as frivolous, malicious, or for failure to state a claim. *See In re John*
18 *Robert Demos*, MC91-0269-CRD, Dkt. No. 1 (W.D. Wash. Jan. 16, 1992).

19 Plaintiff’s complaint does not plausibly allege that he is in imminent danger of serious
20 physical injury. Plaintiff’s claim is based on correctional officers using “unnecessary force” to
21 return him to his cell, and the possibility that prison staff could poison his food or medication.
22 (See Dkt. No. 1-1 at 2–3.) These do not represent plausible allegation[s] that Plaintiff “faced
23 imminent danger of serious physical injury at the time of filing.” *Andrews v. Cervantes*, 493 F.3d
24 1047, 1053 (9th Cir. 2007) (“[T]he availability of the exception turns on the conditions a
25 prisoner faced at the time the complaint was filed, not at some earlier or later time.”). Plaintiff’s
26 objections to Judge Tsuchida’s report and recommendation fail to address the complaint’s factual

1 shortcomings. (*See* Dkt. No. 3.) Indeed, Plaintiff offers only conclusory assertions that he faces
2 imminent danger of serious physical injury. (*See* Dkt. No. 3) (“Even though I am in protective
3 custody, I am still in ‘imminent danger,’ as prison guards who work here in protective custody
4 could do/accomplish the following . . .”).

5 For the reasons explained herein, the Court ORDERS as follows:

- 6 1. The Report and Recommendation (Dkt. No. 2) is ADOPTED;
- 7 2. Plaintiff’s application to proceed *in forma pauperis* (Dkt. No. 1) is DENIED;
- 8 3. This matter is DISMISSED without prejudice pursuant to 28 U.S.C. § 1915(g)
9 and standing bar orders, *see In re John Robert Demos*, MC91-269-CRD, Dkt. No. 1 (W.D.
10 Wash. Jan. 16, 1992); and
- 11 4. The Clerk shall send a copy of this order to Plaintiff and to Judge Tsuchida.

12 DATED this 15th day of January 2019.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE